

**REMARKS**

Claims 1-8, 10-18, 20-25 and 27 are pending in the above-identified application. Claims 1, 13 and 14 are objected to because of informalities. Claims 6, 14, 15 and 17 are rejected under 35 U.S.C. §112 ¶2 for failing to particularly point out and distinctly claim the subject matter that Applicant regards as the invention. Claims 1-4, 8, 10, 12-18, 20-25 and 27 are rejected under §103(a) as being unpatentable over Chandra et al. ("An Online Optimization-based Technique for Dynamic Resource Allocation in GPS Servers," Technical Report UM-CS-2002-030, University of Massachusetts, July 2002; hereinafter referred to as "Chandra") in view of D'Arienzo et al. ("Automatic SLA Management in SLA-Aware Architecture," 10<sup>th</sup> International Conference on Telecommunicaitons, 23 Feb. – 1 Mar. 2003, V. 2, pp. 1402-1406; hereinafter referred to as "D'Arienzo"). Claim 6 is rejected under 35 U.S.C. §103(a) as being unpatentable over Chandra in view of D'Arienzo and further in view of Sheets et al. (U.S. Patent No. 6,816,905; hereinafter referred to as "Sheets"). Claim 11 is rejected under 35 U.S.C. §103(a) as being unpatentable over Chandra in view of D'Arienzo and further in view of Nagarajan et al. ("Modelling and Simulation of an Alarm Based Network Management System for Effective SLA Monitoring and Management," SCI 2003, 7<sup>th</sup> World Multiconference on Systemics, Cybernetics and Informantics Proceedings, July 27-30, 2003; hereinafter referred to as "Nagarajan").

Applicants submit that these amendments and remarks overcome all of the Examiner's outstanding rejections and objections and bring the present Application into condition for allowance. Entry of this amendment and a notice of allowance of all claims are therefore respectfully solicited.

### **Objections to the Claims**

Claims 1, 13 and 14 are objected to because of informalities. In accordance with suggestions made in the current Office Action (O.A.), claims 1, 13, and 14 are amended to address minor informalities identified in the O.A. These Amendments do not change the scope of the claims but merely address issues associated with punctuation and with mismatched elements. Applicants believe that these modifications resolve all the current Objections to the Specification and respectfully request entry of the Amendments and withdrawal of the Objections.

### **Rejections Based Upon §112 ¶2**

Claims 6, 14, 15 and 17 are rejected under 35 U.S.C. §112 ¶2 for failing to particularly point out and distinctly claim the subject matter that Applicant regards as the invention. Claims 6, 14, 15 and 17 are amended to address issues related to antecedent basis identified in the O.A. These Amendments do not change the scope of the claims but merely clarify that which Applicants' consider the claimed technology. Applicants believe that these modifications resolve the rejections based upon §112 ¶2 and respectfully request entry of the Amendments and withdrawal of the §112 rejections.

### **Rejections Based on §103(a)**

Claims 1-4, 8, 10, 12-18, 20-25 and 27 are rejected under §103(a) as being unpatentable over Chandra in view of D'Arienzo. Claim 6 is rejected under 35 U.S.C. §103(a) as being unpatentable over Chandra in view of D'Arienzo and further in view of Sheets. Claim 11 is rejected under 35 U.S.C. §103(a) as being unpatentable over Chandra in view of D'Arienzo and further in view of Nagarajan.

In short, Chandra is directed to the monitoring and management of actual resources in a computing environment, not to the monitoring and management of a service level agreement (SLA). Clearly these are technologies that are only tangentially related to each other, if only because one is more technical in nature and the other is more contractual in nature. In other words, managing the operation of a computing resource is different than managing an agreement

concerning the use of a computing resource. Chandra does not even mention SLAs is therefore an inappropriate basis for a rejection of Applicants' claims. In addition, there is simply no expectation that Chandra would be combined with D'Arienzo by one with skill in the corresponding arts because, like Applicants' claimed subject matter, D'Arienzo is directed to an entirely different technology than Chandra. In other words, the current Office action (O.A.) is simply combining two unrelated references, at least one of one of which is unrelated to Applicants' claimed technology, i.e. the monitoring and management of an SLA.

Specific elements of Chandra are mischaracterized to correspond to elements of Applicants' claimed subject matter. For example, one cited portion of Chandra states:

An alternative approach is to allocate resources to applications based upon the variations in their workloads. In this approach, each application is given a certain minimum share based upon coarse-grain estimates of its resource needs...

(p.1, c. 2, lines 18-29). This excerpt is mischaracterized to as a "resource profile" when, if anything, is seems to be directed more to the idea of a workload profile or a demand profile, although Applicants do not concede either. In fact, the O.A. seems to rely upon this excerpt for a "resource profile," a "workload profile" and a "demand profile." Clearly, it cannot simultaneously stand for all three. For example, the claims state "processing of the workload profile using the resource profile." Since the workload profile "uses" the resource profile, obviously they are not the same element. Applicants also contend neither Nagarajan nor any of the other cited art provides elements which Chandra lacks.

To establish *prima facie* obviousness of a claimed invention under §103(a), all the claim limitations must be taught or suggested by the prior art. (M.P.E.P., §2143.03, citing *in re Royka*, 490 F.2d 981; 180 U.S.P.Q. 580 (CCPA 1974)). In addition, "All words in a claim must be **considered** in judging the patentability of that claim against prior art." (*Id.*, citing *In re Wilson*, 424 F.2d 1382, 1385; 165 U.S.P.Q. 494, 496 (CCPA 1970); *emphasis added*). Applicants believe that the cited art fails to meet this standard. For the reasons above, independent claim 21 is allowable over the cited art. In addition, dependent claims 2, 9, 11, 14, 19 and 22-27 are allowable because they each depend upon one of the allowable independent claims.

**CONCLUSION**

In light of the amendments and remarks made herein, Applicants submit that all pending claims are allowable and earnestly solicits notice thereof. Applicants are not conceding in this application that the unamended claims are not patentable over the art cited by the Examiner, as the present claim amendments are only for facilitating expeditious prosecution of the allowable subject matter. Applicants respectfully reserve the right to pursue these and other claims in one or more continuation and/or divisional patent applications. A Request for a One-Month Extension of Time is being filed and paid for electronically in conjunction with this Response so that Applicants have until July 14, 2008 to respond. It is believed that no other fees are due with the filing of this Amendment/Response. However, should any fees be due, the Commissioner is hereby authorized to charge such fees to the deposit account of IBM Corporation, Deposit Account No. 09-0447.

Respectfully submitted,

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